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7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 JUNE NEWTON,
11

12 Plaintiff,

13 v.

14 NORMAN SOLOMON, an individual,
ART & ARTIFACT THE
15 PHOTOGRAPHIC ART CENTER,
CELEBRITY INC., a Delaware
16 corporation dba in California as
CELEBRITY VAULT, INC.,

17 Defendants.
18

CASE NO. CV11-02350 ODW(VBKx)

**STIPULATED PROTECTIVE
ORDER**

19
20 **1. PURPOSES AND LIMITATIONS**

21 Disclosure and discovery activity in this action are likely to involve
22 production of confidential, proprietary, or private information for which special
23 protection from public disclosure and from use for any purpose other than
24 prosecuting this litigation may be warranted. Accordingly, the parties hereby
25 stipulate to and petition the court to enter the following Stipulated Protective Order.
26 The parties acknowledge that this Order does not confer blanket protections on all
27 disclosures or responses to discovery and that the protection it affords from public
28 disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles. The parties further
2 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
3 Order does not entitle them to file confidential information under seal; Civil Local
4 Rule 79-5.1 sets forth the procedures that must be followed and the standards that
5 will be applied when a party seeks permission from the court to file material under
6 seal.

7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation
9 of information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for
12 protection under Federal Rule of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House
14 Counsel (as well as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

28 2.8 Non-Party: any natural person, partnership, corporation, association, or

1 other legal entity not named as a Party to this action.

2 2.9 Outside Counsel of Record: attorneys who are not employees of a party
3 to this action but are retained to represent or advise a party to this action and have
4 appeared in this action on behalf of that party or are affiliated with a law firm which
5 has appeared on behalf of that party.

6 2.10 Party: any party to this action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this action.

11 2.12 Professional Vendors: persons or entities that provide litigation support
12 services (e.g., photocopying, videotaping, translating, preparing exhibits or
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
14 and their employees and subcontractors.

15 2.13 Protected Material: any Disclosure or Discovery Material that is
16 designated as "CONFIDENTIAL."

17 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19 **3. SCOPE**

20 The protections conferred by this Stipulation and Order cover not only
21 Protected Material (as defined above), but also (1) any information copied or
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or
23 compilations of Protected Material; and (3) any testimony, conversations, or
24 presentations by Parties or their Counsel that might reveal Protected Material.
25 However, the protections conferred by this Stipulation and Order do not cover the
26 following information: (a) any information that is in the public domain at the time of
27 disclosure to a Receiving Party or becomes part of the public domain after its
28 disclosure to a Receiving Party as a result of publication not involving a violation of

1 this Order, including becoming part of the public record through trial or otherwise;
2 and (b) any information known to the Receiving Party prior to the disclosure or
3 obtained by the Receiving Party after the disclosure from a source who obtained the
4 information lawfully and under no obligation of confidentiality to the Designating
5 Party. Any use of Protected Material at trial shall be governed by a separate
6 agreement or order.

7 **4. DURATION**

8 Even after final disposition of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees
10 otherwise in writing or a court order otherwise directs. Final disposition shall be
11 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
12 or without prejudice; and (2) final judgment herein after the completion and
13 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
14 including the time limits for filing any motions or applications for extension of time
15 pursuant to applicable law.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.
18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. If it comes to a Designating Party's
21 attention that information or items that it designated for protection do not qualify for
22 protection, that Designating Party must notify all other Parties within two business
23 days that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in
25 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
5 page that contains protected material. If only a portion or portions of the material on
6 a page qualifies for protection, the Producing Party also must clearly identify the
7 protected portion(s) (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents or materials
9 available for inspection need not designate them for protection until after the
10 inspecting Party has indicated which material it would like copied and produced.
11 During the inspection and before the designation, all of the material made available
12 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this
15 Order. Then, before producing the specified documents, the Producing Party must
16 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.
17 If only a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 (b) for testimony given in deposition or in other pretrial or trial
21 proceedings, that the Designating Party identify on the record, before the close of
22 the deposition, hearing, or other proceeding, all protected testimony.

23 (c) for information produced in some form other than documentary
24 and for any other tangible items, that the Producing Party affix in a prominent place
25 on the exterior of the container or containers in which the information or item is
26 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
27 information or item warrant protection, the Producing Party, to the extent
28 practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must make reasonable
5 efforts to assure that the material is treated in accordance with the provisions of this
6 Order.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 Designating Party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a Party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge within two business days after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of
23 notice. In conferring, the Challenging Party must explain the basis for its belief that
24 the confidentiality designation was not proper and must give the Designating Party
25 an opportunity to review the designated material, to reconsider the circumstances,
26 and, if no change in designation is offered, to explain the basis for the chosen
27 designation. A Challenging Party may proceed to the next stage of the challenge
28 process only if it has engaged in this meet and confer process first or establishes that

1 the Designating Party is unwilling to participate in the meet and confer process in a
2 timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Designating Party shall file and serve a motion to retain
5 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
6 79-5.1, if applicable) within 21 days of the initial notice of challenge or within 14
7 days of the parties agreeing that the meet and confer process will not resolve their
8 dispute, whichever is earlier. Each such motion must be accompanied by a
9 competent declaration affirming that the movant has complied with the meet and
10 confer requirements imposed in the preceding paragraph. Failure by the Designating
11 Party to make such a motion including the required declaration within 21 days (or
12 14 days, if applicable) shall automatically waive the confidentiality designation for
13 each challenged designation. In addition, the Challenging Party may file a motion
14 challenging a confidentiality designation at any time if there is good cause for doing
15 so, including a challenge to the designation of a deposition transcript or any portions
16 thereof. Any motion brought pursuant to this provision must be accompanied by a
17 competent declaration affirming that the movant has complied with the meet and
18 confer requirements imposed by the preceding paragraph.

19
20 The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party. Frivolous challenges, and those made for an improper purpose
22 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
23 expose the Challenging Party to sanctions. Unless the Designating Party has waived
24 the confidentiality designation by failing to file a motion to retain confidentiality as
25 described above, all parties shall continue to afford the material in question the level
26 of protection to which it is entitled under the Producing Party's designation until the
27 court rules on the challenge.

28 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 case only for prosecuting, defending, or attempting to settle this litigation. Such
4 Protected Material may be disclosed only to the categories of persons and under the
5 conditions described in this Order. When the litigation has been terminated, a
6 Receiving Party must comply with the provisions of section 13 below (FINAL
7 DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party
9 at a location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action,
16 as well as employees of said Outside Counsel of Record to whom it is reasonably
17 necessary to disclose the information for this litigation and who have signed the
18 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
19 A;

20 (b) the officers, directors, and employees (including House Counsel)
21 of the Receiving Party to whom disclosure is reasonably necessary for this litigation
22 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
23 A);

24 (c) Experts (as defined in this Order) of the Receiving Party to
25 whom disclosure is reasonably necessary for this litigation and who have signed the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (d) the court and its personnel;

28 (e) court reporters and their staff, professional jury or trial

1 consultants, mock jurors, and Professional Vendors to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom
5 disclosure is reasonably necessary and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
7 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
8 to depositions that reveal Protected Material must be separately bound by the court
9 reporter and may not be disclosed to anyone except as permitted under this
10 Stipulated Protective Order.

11 (g) the author or recipient of a document containing the information
12 or a custodian or other person who otherwise possessed or knew the information.

13 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
14 **PRODUCED IN OTHER LITIGATION**

15 If a Party is served with a subpoena or a court order issued in other litigation
16 that compels disclosure of any information or items designated in this action as
17 “CONFIDENTIAL,” that Party must:

18 (a) notify in writing the Designating Party within two business days.
19 Such notification shall include a copy of the subpoena or court order;

20 (b) notify in writing within two business days the party who caused
21 the subpoena or order to issue in the other litigation that some or all of the material
22 covered by the subpoena or order is subject to this Protective Order. Such
23 notification shall include a copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be
25 pursued by the Designating Party whose Protected Material may be affected.

26 (d) If the Designating Party timely seeks a protective order, the Party
27 served with the subpoena or court order shall not produce any information
28 designated in this action as “CONFIDENTIAL” before a determination by the court

1 from which the subpoena or order issued, unless the Party has obtained the
2 Designating Party's permission. The Designating Party shall bear the burden and
3 expense of seeking protection in that court of its confidential material – and nothing
4 in these provisions should be construed as authorizing or encouraging a Receiving
5 Party in this action to disobey a lawful directive from another court.

6 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
7 **PRODUCED IN THIS LITIGATION**

8 (a) The terms of this Order are applicable to information produced
9 by a Non-Party in this action and designated as "CONFIDENTIAL." Such
10 information produced by Non-Parties in connection with this litigation is protected
11 by the remedies and relief provided by this Order. Nothing in these provisions
12 should be construed as prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request,
14 to produce a Non-Party's confidential information in its possession, and the Party is
15 subject to an agreement with the Non-Party not to produce the Non-Party's
16 confidential information, then the Party shall:

17 (1) notify in writing within two business days the Requesting
18 Party and the Non-Party that some or all of the information requested is subject to a
19 confidentiality agreement with a Non-Party;

20 (2) provide the Non-Party within two business days with a
21 copy of the Stipulated Protective Order in this litigation, the relevant discovery
22 request(s), and a reasonably specific description of the information requested; and

23 (3) make the information requested available for inspection by
24 the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from
26 this court within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party's confidential information responsive
28 to the discovery request. If the Non-Party timely seeks a protective order, the

Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.1. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5.1 is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION.

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal

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memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 22, 2011 SIDEMAN & BANCROFT LLP

By: /S/ Robert R. Cross

Robert R. Cross
Attorneys for Plaintiff
JUNE NEWTON

DATED: November 16, 2011 SEDGWICK LLP

By: /S/ Kanika D. Corley

Kanika D. Corley
Attorneys for Defendant
WESTERN CANON, INC., dba CELEBRITY
VAULT

DATED: November 15, 2011 DAVID STEINER & ASSOCIATES

By: /S/ David P. Steiner

David P. Steiner
Attorneys for Defendant
NORMAN SOLOMON, ART & ARTIFACTS
INC., JOHN DUNNICLIFF and EMAGE
INTERNATIONAL, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 23, 2011

/s/

United States District/Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Central District of California on
_____[date] in the case of *June Newton v. Norman Solomon, et. al.*, Case No. CV11-02350
ODW (VBKx). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

[Non-California residents] I hereby appoint _____ [print or
type full name] of _____ [print or type full address
and telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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